And by the term "securing" an exclusive Right is here intended, not for the protection of an acknowledged legal right, but a future right: and it was so ruled in case of:

Wheaton v. *Peters*, 8 Pet. (U. S.) 591, 660 (1834).

and that the power is granted to Congress relative to Copyright seems to be determined in the case of:

Brown v. *Duchesne*, 19 How. (U. S.) 183, 195.

And copyright is a species of property permitting the making of said copies of the matter copyrighted (and the main feature of the copyright secured by the said Dr. Howard was the use of tetraethyl lead in gasoline as a motor fuel for purposes aforesaid), and such property rights were so held to be established in the case of:

Stevens v. *Gladding*, 17 How. (U. S.) 447.

It is also an outstanding feature of this action, that after the property and property rights of petitioners were confiscated he should not be compelled to proceed under a rule which is not only impractical and impossible, when the law provides for procedure in equity in Rule 1 and Rule 81 (a) (1) F.R.C.P., and not under Rule 8 (a) or 12 (b) of the F.R.C.P. A very noted case in a controversy over a property right is:

Marbury v. *Madison*, U. S. Supreme Court Condensed Reports, Vol. 1, 3rd Edition, at pages 285, 286, where the late Chief Justice John Marshall, said:

"It is also entirely unworthy of observation, that in declaring what shall be the supreme law of the land, the Constitution itself is first mentioned; and not the

laws of the United States generally, but those only which shall be made in pursuance of the Constitution, have that rank.

Thus, the particular phraseology of the Constitution of the United States confirms and strengthens the principle support to be essential to all Constitutions, thus, a law repugnant to the Constitution is void; and courts, as well as other departments, are bound by that instrument. The rule must be discharged."

And in the case of:

Marbury v. *Madison* (Cranch 1), U. S. Reps. 5, the late Chief Justice John Marshall again said (p. 58):

"The very essence of civil liberty certainly consists in the right of every individual to claim the protection of the laws, whenever he receives an injury, one of the first duties of government is to afford that protection."

At page 59:

"The government of the United States has been emphatically termed a government of laws, and not of men, it will certainly cease to deserve this high appellation if the laws furnish no remedy for the violation of a vested right."

CONCLUSION

Wherefore, petitioners respectfully pray that the above entitled Honorable Court, reverse the judgment and ruling of the Circuit Court of Appeals for the Second Circuit, and that petitioners may have such other aid and relief as the Court may deem proper.

Dated: New York, N. Y., November 24, 1944.

Respectfully submitted,

J. D. DRISCOLL, Trustee,
In Propiam Personam.

W. D. NOLAND, Trustee,
In Propiam Personam.

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